

Attorney Docket No. VRBA.P014.A

REMARKS

Terminal Disclaimer overcomes the obviousness-type double patenting rejection of June 28, 2006.

The Examiner is thanked for the Office Action of June 28, 2006. In that Office Action, the Examiner rejected all pending claims 1, 3, and 9-14, in this Application under a judicially-created obviousness double patenting rejection with US Patent Application Serial No. 10/786,177, also assigned to the Applicant. A terminal disclaimer is being submitted with this Amendment and Remarks to place this Application in condition for allowance.

Comments on IDS submitted on October 21, 2004

The two "references," which were the results of searches conducted by a third party, NERAC, of Tolland, CT, submitted in the IDS of October 21, 2004, noted as items A and B were not to be considered as references, but rather to be considered as sufficient search results for relevant references contained therein. The search was conducted by a third party for purposes of a Petition to Make Special for accelerated examination under MPEP 708.02. Thus, the two documents listing references should have been submitted as Appendices to the Petition to Make Special to show the sufficiency of the search conducted. All relevant references listed in the two lists of search were submitted in an IDS for the parent application US Patent Application Serial No. 10/786,177 on February 23, 2004. See MPEP §2004, ¶13. It is submitted that the PTO has not issued clear rules on the submission of third party search results in MPEP 708.02(VIII). It is the responsibility of the Applicant to show to PTO that a sufficient search was conducted however.

Therefore, the Applicant asserts that the Examiner has considered all relevant references, the Applicant having brought all relevant references contained in the lists for items A and B in the IDS of October 21, 2004, and the parent application Serial No. 10/786,177 to the Examiner's attention. MPEP §2004, ¶13.

CONCLUSION

Attorney Docket No. VRBA.P014.A

The Examiner is thanked for the Office Action of June 28, 2006. The Applicant respectfully submits that the rejection is no longer relevant due to the terminal disclaimer filed with this amendment and in light of the remarks above, and that the pending claims 1, 3, and 9-14 are now in condition for allowance, and a Notice of Allowance is earnestly solicited. If the Examiner believes that a telephonic or in-person conference would help resolve any remaining issues and expedite the prosecution of the Application, she is invited to contact the Applicant at the contacts listed below.

Respectfully submitted,
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